

ESTTA Tracking number: **ESTTA336771**Filing date: **03/11/2010**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Bach Flower Remedies Limited
Granted to Date of previous extension	03/14/2010
Address	Nelsons House, 83 ParksideWimbledon London, SW19 5LP UNITED KINGDOM
Attorney information	Donna J. Bunton Nixon & Vanderhye P.C. 901 North Glebe Road11th Floor Arlington, VA 22203 UNITED STATES nixonptomail@nixonvan.com, djb@nixonvan.com

Applicant Information

Application No	77717046	Publication date	09/15/2009
Opposition Filing Date	03/11/2010	Opposition Period Ends	03/14/2010
Applicant	Ghandehari, Ashkan 28 Arcade Irvine, CA 92603 UNITED STATES		

Goods/Services Affected by Opposition

Class 021. All goods and services in the class are opposed, namely: Bottles, sold empty; Drinking flasks; Empty water bottles for bicycles; Flasks; Hip flasks; Insulated flasks; Insulated vacuum flasks; Neoprene zippered bottle holders; Plastic water bottles sold empty; Sports bottles sold empty; Squeeze bottle sold empty; Steel wool for cleaning; Vacuum bottles; Vacuum flasks
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1237564	Application Date	11/17/1980
Registration Date	05/10/1983	Foreign Priority Date	NONE
Word Mark	RESCUE REMEDY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 1979/09/01 First Use In Commerce: 1979/09/01 an Herbal Beverage Made from Essences (Not Being in the Nature of Essential Oils) Extracted from Flowers

U.S. Registration No.	1822260	Application Date	03/12/1993
Registration Date	02/22/1994	Foreign Priority Date	NONE
Word Mark	RESCUE REMEDY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1951/00/00 First Use In Commerce: 1961/00/00 homeopathic pharmaceutical preparations made from flower extracts for use in alleviating emotional and mental stress		

U.S. Registration No.	2517685	Application Date	07/07/1997
Registration Date	12/11/2001	Foreign Priority Date	NONE
Word Mark	RESCUE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2001/01/15 First Use In Commerce: 2001/01/15 homeopathic pharmaceutical preparation made from flower extracts for alleviating emotional and mental stress Class 030. First use: First Use: 2001/01/15 First Use In Commerce: 2001/01/15 herbal food beverage concentrate made from essences (not being in the nature of essential oils) extracted from plants and flowers		

Attachments	5027-76NoticeOfOpposition.pdf (6 pages)(1227830 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Donna J. Bunton/
Name	Donna J. Bunton
Date	03/11/2010

The grounds are as follows:

(1) Application Serial No. 77,717,046 seeks registration of the mark RESCUE for *bottles, sold empty; drinking flasks; empty water bottles for bicycles; flasks; hip flasks; insulated flasks; insulated vacuum flasks; neoprene zippered bottle holders; plastic water bottles sold empty; sports bottles sold empty; squeeze bottle sold empty; steel wool for cleaning; vacuum bottles; vacuum flasks* (hereafter "Applicant's goods").

The application was filed April 19, 2009 and is based on Applicant's intention to use the mark in commerce pursuant to § 1(b) of the Trademark Act.

(2) Since long prior to the filing date of Application Serial No. 77/717046 on April 19, 2009, Opposer adopted, used and is using in commerce the marks RESCUE and RESCUE REMEDY for *flower essence preparations and including herbal beverages made from flower essences* (hereafter "herbal preparations and beverages").

(3) Opposer is the owner of the trademarks RESCUE and RESCUE REMEDY, among others, having continuously used the mark RESCUE REMEDY for herbal preparations and beverages in commerce since 1961 and the mark RESCUE for herbal preparations and beverages in commerce since January 15, 2001.

(4) Opposer duly registered the marks RESCUE and RESCUE REMEDY as trademarks in the United States Patent and Trademark Office, Registration Nos. 1,237,564 (issued May 10, 1983), 1,822,260 (issued February 22, 1994) and 2,517,685 (issued December 11, 2001). Opposer filed Application Serial No. 77/485,289 to register the mark RESCUE for a wide range of herbal preparations and related goods and services, including mineral and spring water, as well as other beverages, on May 28, 2008.

(5) Registration Nos. 1,237,564, 1,822,260 and 2,517,685 are *prima facie* evidence of the validity thereof, Opposer's ownership and exclusive right to use the marks RESCUE and RESCUE REMEDY in commerce and are constructive notice of Opposer's ownership thereof, all as provided by §§ 7(b) and 22 of the Trademark Act of 1946. As Opposer's right to use the mark RESCUE REMEDY in commerce has become incontestable, Registration Nos. 1,237,564, 1,822,260 and 2,517,685 are conclusive evidence of Opposer's right to use said mark in commerce on the goods specified in the registrations, as provided by §§ 15 and 33(b) of the Trademark Act of 1946.

(6) By virtue of Opposer's long, continuous and substantial promotion and sale of goods covered by Registration Nos. 1,237,564, 1,822,260 and 2,517,685, its use and bona fide intention to use the mark RESCUE for the goods and services covered by Application Serial No. 77/485,289, and its maintenance of high quality standards relating thereto, purchasers, consumers and users of such products, and others, have come to recognize the marks RESCUE and RESCUE REMEDY as indications of origin in Opposer, as a consequence of which Opposer has established valuable goodwill and exclusive rights in the marks RESCUE and RESCUE REMEDY.

(7) Opposer's marks RESCUE and RESCUE REMEDY and Applicant's mark RESCUE are identical or identical in part, each including the same word "RESCUE."

(8) Opposer's herbal preparations and beverages sold and intended to be sold under the marks RESCUE and RESCUE REMEDY and Applicant's goods intended to be sold or offered under the mark RESCUE are related and complementary products which are or are likely to be offered through the same or overlapping channels of trade

to the same or overlapping classes of purchasers so that purchasers, prospective purchasers, users and others are likely to be confused, mistaken or deceived into the belief, contrary to fact, that Applicant's goods offered under the mark RESCUE emanate from and/or are in some way sponsored or approved by Opposer or are otherwise related to Opposer's RESCUE and RESCUE REMEDY herbal preparations and beverages, thereby damaging Opposer.

(9) Further evidence of the related nature of Opposer's and Applicant's goods are the facts that (a) Applicant's previously co-pending Application Serial No. 77/720,252 for the mark RESCUE STIX (now abandoned), sought registration of that mark for, *inter alia*, *dietary and nutritional supplements, dietary beverage supplements for human consumption in liquid and dry mix form for therapeutic purposes, herbal supplements, vitamin supplement in tablet form for use in making an effervescent beverage when added to water and drinking waters* and was refused registration based on likelihood of confusion with Opposer's registration of the mark RESCUE and (b) the application being opposed herein, Application Serial No. 77/717,046 for the mark RESCUE, initially included goods similar to those referred to above in Classes 5 and 32, which goods were deleted by Applicant after the application was refused registration based on likelihood of confusion with Opposer's registration of the mark RESCUE.

(10) Applicant is not lawfully entitled to the registration which it seeks for the reason, *inter alia*, that the mark RESCUE as used or intended for use for Applicant's goods so resembles Opposer's previously used and registered marks RESCUE and RESCUE REMEDY as to be likely to cause confusion, to cause mistake or to deceive

within the meaning of Section 2(d) of the Federal Trademark Act, thereby damaging Opposer.

WHEREFORE, Opposer prays that the present opposition be sustained and the registration of RESCUE sought by Applicant be refused.

The requisite filing fee of \$300 is submitted herewith.

Bach Flower Remedies Limited

By its Attorneys

Date: March 11, 2010

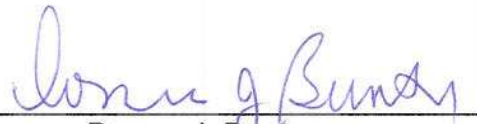
By: Donna J. Bunton

Donna J. Bunton
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Opposition was served on Applicant by depositing same in the United States mail, postage prepaid, this 11th day of March, 2010 at the following address:

Ashkan Ghandehari
28 Arcade
Irvine, CA 92603



Donna J. Bunton